

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

COLUMBIA HOUSE, a/k/a CONNECTICUT
HEIGHTS APARTMENT, and
MAURINE SIMMONS
Respondents

Case No. I-00-70134

FINAL ORDER

I. Introduction

By Notice of Infraction (No. 00-70134) the Government charged Respondents Columbia House and Maurine Simmons with a violation of D.C. Official Code § 47-2824, which requires the owner or manager of a swimming pool to pay a license fee each year. The Notice of Infraction charged that the pool, located at 4850 Connecticut Avenue, N.W., was being operated on June 15, 2001, without the required license, and a fine of \$500 was sought.

On August 10, 2001, Respondents filed a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), together with a request for the suspension or reduction of the prescribed fine. The plea was filed on behalf of Respondents by Valorie Rogers, a representative of Sierra Pool Management (“Sierra”), who represented that Sierra began managing the pool at the subject property in 2001, and that Sierra had assumed the responsibility for obtaining the pool license. It was explained that the application for the license had been

mailed on March 8, 2001, with a check for the fee and that on May 23, 2001, three days before the scheduled opening of the pool, Sierra realized that the permit had not been received. After inquiring about the status of the application, it was told that there was no record of the application having been received by the licensing authority. Filed with the plea was a copy of the license application, which is dated March 8, 2001.¹ Sierra states that it eventually obtained the license by appearing in person at the licensing authority's office on July 30, 2001. A copy of the receipt for the payment of the license fee was also filed.

The Government has responded, stating that it objects to the suspension or reduction of the fine because Respondents are repeat offenders. The Government has filed a copy of an inspection report dated July 13, 2000, pertaining to the pool at the subject property. The report states that "Winkler Co." managed the pool at that time. Among the deficiencies cited was the absence of a license for the pool.

II. Findings of Fact

1. Respondents are the apparent owners or managers of the property located at 4850 Connecticut Avenue, N.W.
2. Sierra managed the pool at 4850 Connecticut Ave., N.W., in 2001, and it had assumed the responsibility for obtaining the required pool license.

¹ The named applicant is "Charles E. Smith Residential" and the trade name of the business at the subject property is identified as "Connecticut Heights Apartment". The application was made by Valorie Rogers, as a corporate officer of Charles E. Smith Residential for the Connecticut Heights Apartment, 4850 Connecticut Avenue, N.W. The relationship between Sierra and Charles E. Smith Residential is not apparent.

3. By their plea of Admit with Explanation, Respondents have admitted violating D.C. Official Code § 47-2824 by operating the pool at 4850 Connecticut Avenue, N.W., on June 15, 2001, without a license.
4. There is an absence of mitigating factors to support the suspension or reduction of the fine.

III. Conclusions of Law

D.C. Official Code § 47-2824 requires the owner or manager of a swimming pool to pay the prescribed pool license fee each year. A violation of the statute is subject to criminal prosecution or, alternatively, to the imposition of civil fines and penalties, pursuant to the Civil Infractions Act of 1985. This case arises under the Civil Infractions Act of 1985. D.C. Official Code §§ 2-1801.01 – 2-1802.05

Respondents violated D.C. Official Code § 47-2824 on June 15, 2001, by operating the pool on the subject property without a license.² *Ibid.* The fine for this violation is \$500 for a first offense. 16 DCMR §§ 3201.1(b)(1) and 3214.1(u).

² By their plea of Admit with Explanation Respondents have admitted liability. Also, the fact that Sierra managed the pool and had assumed responsibility for obtaining the license does not affect Respondents' liability. 16 DCMR 3201.4 provides: "An infraction committed by an individual acting as agent, partner, director, officer, or employee of a person shall be considered to have been committed by that person."

Respondents knowingly operated the pool without a license at least from the date of the infraction, June 15, 2001, until July 30, 2001.³ Respondents have provided no explanation for their failure to obtain the license during this period of time, although they knew as early as May 23, 2001, that the licensing authority had no record of the application for the license. In addition, this is not the first time that Respondents have operated the pool without a license.⁴ These facts and circumstances militate against the suspension or the reduction of the fine.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this ____ day of _____, 2002:

ORDERED, that Respondents Columbia House, a/k/a Connecticut Heights Apartment, and Maurine Simmons, jointly and severally, shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

³ D.C. Official Code §47-2851.10 provides that a license shall continue in force until thirty (30) days from the date that notice of expiration and the application for renewal has been mailed to the licensee, or six (6) months from the expiration date, whichever occurs first. Under certain circumstances, therefore, a duly issued license that has expired on its face may still be valid. Here the record contains no evidence that a license had been issued for prior years.

⁴ Respondents are not charged with a repeat infraction under 16 DCMR 3201.1, which provides that an infraction shall be a repeat infraction and shall carry enhanced penalties if the infraction is a violation of the same provision of law within the same three year period as the original infraction. A repeat infraction of D.C. Official Code § 47- 2821 carries a fine of \$1,000 for a second offense. 16 DCMR § 3201.1 (b)(2).

ORDERED, that if Respondents fail to pay the above amount within twenty (20) calendar days of the date of mailing of this order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this order. D.C. Official Code § 2-1803(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits, pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real or personal owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/14/02**

Robert E. Sharkey
Administrative Judge